

Nuclear Regulatory Commission

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the answer may so state and the statements shall have the effect of a denial. Allegations of fact not denied shall be deemed to be admitted. The answer shall separately state and identify matters alleged as affirmative defenses and may also set forth the matters of fact and law on which the applicant or recipient relies. The answer may request a hearing.

(c) If the answer requests a hearing, the Commission will issue a notice of hearing specifying:

(1) The time, place, and nature thereof;

(2) The legal authority and jurisdiction under which the hearing is to be held; and

(3) The matters of fact and law asserted or to be considered. The time and place of hearing will be fixed with due regard for the convenience and necessity of the parties or their representatives and for the public interest. An answer to a notice of hearing is not required.

(d) An applicant or recipient may file an answer, and waive or fail to request a hearing, without waiving the requirement for findings of fact and conclusions of law or the right to seek Commission review in accordance with the provisions of §§ 4.71 through 4.74. At the time an answer is filed the applicant or recipient may also submit written information or argument for the record if he does not request a hearing.

(e) An answer or stipulation may consent to the entry of an order in substantially the form set forth in the notice of opportunity for hearing; such order may be entered by the responsible Commission official. The consent of the applicant or recipient to the entry of an order shall constitute a waiver by him of a right to: (1) A hearing under the Act and § 4.48, (2) findings of fact and conclusions of law, and (3) seek Commission review.

(f) The failure of an applicant or recipient to file an answer within the period prescribed, or, if he requests a hearing, his failure to appear therefor, shall constitute a waiver by him of a right to: (1) A hearing under the Act and § 4.48, (2) conclusions of law, and (3) seek Commission review. In the event of such waiver, the responsible NRC official may find the facts on the basis of

the record available and enter an order in substantially the form set forth in the notice of opportunity for hearing.

(g) An order entered in accordance with paragraph (e) or (f) of this section shall constitute the final decision of the Commission, unless the Commission, on its own motion, within forty-five (45) days after entry of the order, issues its own decision, which shall then constitute the final decision of the Commission.

(h) A copy of an order entered by the responsible NRC official shall be mailed to the applicant or recipient and to the complainant, if any.

(i) Nothing in this section shall be deemed to place the burden of proof on the applicant or recipient.

[29 FR 19277, Dec. 31, 1964, as amended at 38 FR 17928, July 5, 1973; 40 FR 8778, Mar. 3, 1975; 68 FR 51344, Aug. 26, 2003]

HEARINGS AND FINDINGS

§ 4.61 Presiding officer.

One or more members of the Commission or one or more administrative law judges appointed pursuant to section 3105 of title 5 of the United States Code shall: (a) Preside at a hearing and (b) make findings of fact and conclusions of law if an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 4.51(d).

[35 FR 11459, July 17, 1970]

§ 4.62 Right to counsel.

In all proceedings under §§ 4.51–4.81, the applicant or recipient and the responsible NRC official shall have the right to be represented by counsel. A notice of appearance shall be filed by counsel prior to participation in any such proceedings.

§ 4.63 Procedures, evidence, and record.

(a) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such procedures as are proper (and not inconsistent with §§ 4.61 through 4.64) relating to the conduct of the hearing, giving of notices subsequent to those provided for in § 4.51, taking of

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testimony, exhibits, arguments and briefs, requests for finding, and other related matters. Both the responsible NRC official and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice of hearing or as determined by the presiding officer at the outset of or during the hearing.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) Each decision made after a hearing has been held shall be based on the hearing record, and written findings of fact and conclusions of law shall be made.

(d) If an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 4.51(d), written findings of fact and conclusions of law shall be made.

[29 FR 19277, Dec. 31, 1964, as amended at 35 FR 11459, July 17, 1970; 38 FR 17928, July 5, 1973]

§ 4.64 Consolidated or joint hearings.

In cases in which the same or related facts are asserted to constitute non-compliance with this subpart with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this subpart applies or noncompliance with this subpart and the regulations of one or more other Federal departments or agencies issued under title VI of the Civil Rights Act of 1964, the Commission may, by agreement with such other departments or agencies, where applicable,

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provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this subpart. Final decisions in such cases, insofar as this regulation is concerned shall be made in accordance with § 4.72.

[29 FR 19277, Dec. 31, 1964, as amended at 40 FR 8778, Mar. 3, 1975; 68 FR 51344, Aug. 26, 2003]

DECISION AND NOTICE

§ 4.71 Initial decision or certification.

The officer designated:

(a) To preside at a hearing, or,

(b) To make findings of fact and conclusions of law if an applicant or recipient waives a hearing and submits written information or argument for the record in accordance with § 4.51(d), shall render an initial decision on the record, or, if the Commission so directs, shall certify the entire record to the Commission for decision, together with a recommended decision on the record. A copy of such initial decision, or of such certification and recommended decision, shall be mailed to the applicant or recipient.

§ 4.72 Exceptions and final decision.

(a) The applicant or recipient, within thirty (30) days of the mailing of an initial decision or a recommended decision, may file with the Commission his exceptions to such decision, with his reasons therefor.

(b) In the absence of exceptions to an initial decision, the Commission may, on its own motion within forty-five (45) days after the mailing of such initial decision, serve on the applicant or recipient a notice that the Commission will review the decision.

(c) Upon the filing of exceptions to an initial decision or of a notice of review, the Commission shall review such initial decision and issue its own decision on the record with its reasons therefor.

(d) In the absence of either exceptions to an initial decision or of a notice of review, such initial decision shall constitute the final decision of the Commission.

(e) Upon the filing of exceptions to a recommended decision, the Commission shall review such recommended